

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MARITEL, INC.)	File Nos. 0001252148, 0001252156,
)	0001252177, 0001252214, 0001252257,
Request to Extend Construction Deadline for)	0001252280, 0001252315, 0001252325,
Certain VHF Public Coast Station Geographic)	0001252334
Area Licenses)	

ORDER

Adopted: November 14, 2003

Released: December 4, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On March 27, 2003, MariTEL, Inc. (MariTEL) requested a waiver and two-year extension of the five-year construction requirement applicable to its licenses for nine VHF public coast (VPC) Station Areas (VPCSAs).¹ For the reasons that follow, MariTEL's request is granted.

2. *Background.* Public coast stations are commercial mobile radio service (CMRS) providers that allow ships to send and receive messages and to interconnect with the public switched telephone network.² VHF public coast station coverage generally extends twenty to thirty miles from the transmitter.³ Geographic VPC licensees must demonstrate that they are providing substantial service within five years of the initial license grant, and again within ten years of the initial license grant.⁴ For maritime VPCSAs, the Commission has stated that the five-year substantial service requirement can be satisfied by coverage to one-third of the major waterway(s) in the service area.⁵ MariTEL, through its wholly-owned subsidiaries, is the licensee for nine maritime VPCSAs and seven inland VPCSAs. The maritime VPCSA licenses were granted on May 19, 1999, so the first construction date for those licenses is May 19, 2004.

3. MariTEL states that it originally planned to meet the deadline by constructing a VPC ship-to-shore voice communications network that relied on digital selective calling technology.⁶ It now believes

¹ See File Nos. 0001252148 (Call Sign WPOJ538), 0001252156 (Call Sign WPOJ531), 0001252177 (Call Sign WPOJ537), 0001252214 (Call Sign WPOJ533), 0001252257 (Call Sign WPOJ535), 0001252280 (Call Sign WPOJ532), 0001252315 (Call Sign WPOJ534), 0001252325 (Call Sign WPOJ536), 0001252334 (Call Sign WPOJ530), Request for Rule Waiver and Extension of Construction Deadline (filed Mar. 27, 2003) (Request). MariTEL filed an identical request for each license at issue.

² 47 C.F.R. § 80.5; Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd 19853, 19856 ¶ 3 (1998) (*Third Report and Order*).

³ *Id.* at 19859 ¶ 9.

⁴ See 47 C.F.R. § 80.49(a)(1).

⁵ *Third Report and Order*, 13 FCC Rcd at 19870 ¶ 34.

⁶ Request at 2.

that the advent and proliferation of other wireless technologies, such as cellular and personal communications services, has drastically reduced the market for VPC voice communications.⁷ MariTEL believes that a data network, which offers such services as automatic vessel location, short messaging and electronic mail, would be of greater benefit to the maritime industry.⁸ MariTEL intends to deploy its maritime data network using an innovative data technology that is specifically geared toward the maritime community.⁹ Because it will require additional time to develop and test the necessary equipment that will enable it to offer data services, it requests that the construction deadline be extended to May 19, 2006.¹⁰ MariTEL argues that maintaining the May 19, 2004 deadline would be contrary to the public interest because MariTEL could meet it only through the continued construction of its original voice network.¹¹

4. On May 7, 2003, we sought comment on MariTEL's request.¹² Comments were received from the United States Coast Guard (Coast Guard), and reply comments were received from MariTEL and the United States Department of Transportation (DOT).

5. *Discussion.* Section 1.925 of the Commission's Rules provides that a waiver of the Commission's Rules may be granted if it is shown that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or the applicant has no reasonable alternative.¹³ MariTEL argues that a waiver is warranted in this instance under the second prong.¹⁴ Based on the record before us, we agree.

6. Unique or unusual circumstances. We believe that MariTEL has demonstrated unique or unusual circumstances. Despite the investment of nearly fifty million dollars to develop and deploy a state-of-the-industry voice communications network, MariTEL has seen its subscriber base and call volume fall dramatically from the levels once seen in the maritime public correspondence industry.¹⁵ MariTEL asserts that this decline is attributable to an increase in the number of competing services that are sufficient to meet mariners' needs, and a decrease in the equipment and usage costs for those services.¹⁶ In support of its contention that a voice-based public coast service is no longer economically viable, MariTEL points out that maritime public correspondence service is still provided in some other countries only on a government-operated or -subsidized basis, or by volunteers.¹⁷

7. In addition, we note that MariTEL's inland VPCSA licenses were granted on October 19, 2001, and thus have a five-year construction deadline of October 19, 2006. Extending the five-year

⁷ *Id.* at 4.

⁸ *Id.* at 7.

⁹ *Id.* at 7 & n.6.

¹⁰ *Id.* at 9.

¹¹ *Id.* at 11.

¹² Wireless Telecommunications Bureau Seeks Comment on MariTEL, Inc. Request to Extend Construction Deadline for Certain VHF Public Coast Station Geographic Area Licenses, *Public Notice*, 18 FCC Rcd 9325 (WTB PSPWD 2003).

¹³ 47 C.F.R. § 1.925(b)(3).

¹⁴ Request at 11.

¹⁵ *Id.* at 3-6.

¹⁶ *Id.* at 3-5.

¹⁷ *Id.* at 5.

construction deadline for MariTEL's maritime VPCSA licenses to May 19, 2006 would make the build-out requirements proximate for both sets of licenses.

8. Public interest. Because the market demand for voice communication services is already being met by other CMRS licensees (for example, cellular and PCS licensees), we believe that it would be counterproductive to require MariTEL to complete construction of its originally planned voice network and thereby, deny it the opportunity to construct a network that deploys innovative data services.¹⁸ As MariTEL suggests, expeditious service will lose its value if such service does not satisfy market demands.¹⁹ In similar circumstances, it has been deemed to be in the public interest to extend a construction deadline in order to permit licensees to implement new and innovative communications technologies.²⁰ Therefore, we believe that in this instance, it is in the public interest to extend MariTEL's construction deadline to May 19, 2006, so that it may have additional time to test and develop the necessary equipment that will enable it to offer data services.

9. MariTEL has indicated that it intends to examine the feasibility of using automatic identification system (AIS) technology for its data network.²¹ The Coast Guard argues that MariTEL's waiver request is not in the public interest because it is not consistent with current international AIS standards.²² It contends that those standards have thus far limited AIS operations to maritime safety and navigation safety related operations, rather than commercial operations.²³ The Coast Guard suggests that MariTEL's proposed commercial use of AIS could compromise maritime safety and navigation related operations.²⁴ It also argues that MariTEL fails to explain how it plans to use all of its VHF channels since only two of those channels can be used by AIS technology.²⁵ We believe, however, that we need not address the question of whether AIS is the most appropriate technological option for MariTEL's proposed data network in order to decide the question of whether MariTEL's extension request should be granted. As indicated, the purpose of the two-year construction extension is to provide MariTEL with the additional time to assess the feasibility of various technological options in order to determine which option can most effectively and efficiently allow it to provide innovative and valuable data services via its licensed VPC spectrum. MariTEL asserts that it will choose another technology if, during the two-year extended construction period, it determines that AIS technology is not feasible or permissible.²⁶ Further,

¹⁸ See *Monet Mobile Networks, Inc., Order*, 17 FCC Rcd 6452, 6453 ¶ 4 (WTB CWD 2002).

¹⁹ Request at 11.

²⁰ See *Request of Licensees in the 218-219 MHz Service for Waiver of the Five-Year Construction Deadline, Order*, 14 FCC Rcd 5190, 5194 ¶ 8 (WTB PSPWD 1999); see also *Extension of the Five-Year Build-Out Period for BTA Authorization Holders in the Multipoint Distribution Service, Memorandum Opinion and Order*, 16 FCC Rcd 12593, 12506 ¶ 8 (MMB 2001); *FCI 900, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 11072, 11076-77 ¶ 6 (WTB 2001); *Leap Wireless, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 19573, 19575-76 ¶¶ 7-9 (WTB CWD 2001).

²¹ Request at 7 & n.6.

²² Coast Guard Comments at 4.

²³ Coast Guard Comments Appendix at 2.

²⁴ Coast Guard Comments at 8. The Coast Guard also argues that MariTEL does not adequately explain how it anticipates meeting its Channel 16 (156.800 MHz) safety watch requirements, see 47 C.F.R. § 80.303, while operating its proposed new network. Coast Guard Comments at 6. While we are not conditionally granting MariTEL's extension request on its explanation of how it plans to comply with Section 80.303, we nevertheless expect, and MariTEL has represented, see Reply Comments at 3 n.5, 7-9, that it will comply with all applicable regulatory obligations, including but not limited to these regarding safety watch requirements.

²⁵ Coast Guard Comments Appendix at 7.

²⁶ MariTEL Reply Comments at 6-7.

we are mindful of the Coast Guard's concerns in this matter and considered them fully in reaching our decision. In this regard, we do not intend for the relief granted here to authorize any operations that could interfere with maritime safety or homeland security.

10. Similarly, we do not believe that the concerns expressed in DOT's comments indicate that denial of the extension request is warranted under the circumstances presented. DOT is concerned that MariTEL's contemplated data network may adversely affect international safety and navigation systems now operating in the Great Lakes and on the St. Lawrence Seaway.²⁷ Again, the question presently before us is whether to extend the five-year construction deadline for MariTEL's maritime VPCSA licenses. Issues relating to MariTEL's future operations will be addressed in the future, as appropriate.²⁸ Because we believe that the introduction of innovative data services to the maritime community is in the public interest, we grant MariTEL's extension request.

11. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by MariTEL, Inc. on March 27, 2003 IS GRANTED.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

²⁷ DOT Reply Comments at 1.

²⁸ In addition, we note that grant of Maritel's construction extension request does not bear on the pending dispute between Maritel and the Coast Guard regarding AIS operations on Channels 87 and 88. *See* Wireless Telecommunications Bureau Seeks Comment on Maritel, Inc. Petition for Declaratory Ruling and National Telecommunications and Information Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels 87B and 88B, *Public Notice*, DA 03-3585 (WTB PSPWD rel. Nov. 7, 2003); Wireless Telecommunications Bureau Seeks Comment on Maritel, Inc. Petition for Declaratory Ruling Regarding Use of Maritime VHF Channel 88, *Public Notice*, 18 FCC Rcd 14250 (WTB PSPWD 2003).